

REMARKS

This amendment is responsive to the Office Action dated March 6, 2008, the response to which is due June 6, 2008. Applicant would initially like to thank the Examiner for the indication of allowable subject matter in Claims 31 – 34 and 37 – 39. Claims 30, 35, 36, and 40 were rejected in the Office Action as being unpatentable under 35 U.S.C. §103(a) over Feld, U.S. Patent Publication No. 2004/0002626. Applicant has carefully reviewed the arguments presented in the Office Action, and respectfully request reconsideration of the rejected claims in view of the remarks presented below.

Rejection of Claim 30

Claim 30 is set forth below:

*30. A method of manufacturing a cardiac harness, comprising:
providing a metallic wire;
covering the wire with a dielectric material; and
forming the wire into a plurality of spring members.*

The Office Action rejects Claim 30 as being unpatentable over Feld et al. (2004/0002626). The Office Action asserts that Feld discloses a cardiac harness that is made of metal wires, citing paragraph [0195]. (Office Action, ¶3) Paragraph [0195] expressly refers to the embodiments depicted in Figures 24 and 25. In Figure 26, the embodiment of Figure 25 is shown attached to a heart, where elongate members extend longitudinally from an apical region.

The Office Action acknowledges that Feld does not teach using an insulating material on the embodiment of Figures 24 and 25. However, the Office Action sought to overcome the deficiency by asserting that "it is well known to provide an insulating material to cover a wire when used in the body such as with the heart in order to protect the heart from any unwanted electrical shocks when using metal wires . . ." (Office Action, ¶3). Applicant respectfully traverses this contention and submits that it would not be obvious to use insulation with a device such as that disclosed in Feld, since it is purely mechanical and there are no electrical contacts or electricity utilized by the Feld device.

No reference is cited in the Office Action's rejection of Claim 30 to support the use of dielectric material in connection with the cardiac harness. The Office Action does cite Okuzumi, U.S. Patent No. 6,587,734, as part of the art not relied upon to show "the use of an insulating material used with wires in contact with the heart." (Office Action, ¶5). Okuzumi, however, discusses the use of an insulating material in connection with electrical contacts placed on the heart in connection with pacemaker leads. The Office Action's conclusion that it would have been obvious to cover the device of Feld with insulating material is respectfully submitted to be unsupported by the cited art, where Feld's wires only serve a mechanical "expanding" function without any electrical leads or electrical purpose.

Applicant's disclosure identified the benefit of electrical insulation on a cardiac harness to focus an electrical charge through the heart and not around the heart's surface.

The Office Action failed to cite any prior art disclosure that recognized this benefit.

Applicant therefore contends that the teachings of Feld (with or without Okuzumi) would be inadequate to compel one of ordinary skill in the art, without the benefit of Applicant's disclosure, to cover the wire of Feld with insulating material as suggested by the Office Action because Okuzumi utilized electrical leads while Feld was purely mechanical.

Accordingly, Applicant respectfully submits that there is no teaching proffered by the Office Action that would support covering the Feld device with insulating material, much less a dielectric material, and therefore the Office Action has failed to establish a *prima facie* case of obviousness.

Applicant further contends that even if it could be shown that it would have been obvious to use insulating material in connection with a cardiac harnesses, it would not have been obvious to use such insulating material in connection with the device of Feld as depicted in Figures 24 and 25. As shown in Figure 26, the Feld device leaves a large majority of the heart's surface area uncovered and exposed. Electrical contacts for defibrillation could readily be located on the heart's surface away from the Feld device, eliminating a benefit to applying insulation to the device. Thus, even if one recognized the advantage disclosed by Applicant of directing the charge through the heart, one skilled in the art would not have been compelled to insulate the device of Feld, which would unnecessarily add to the cost of the device and possibly impact the mechanical properties of the device. For this independent reason, Applicant respectfully contends

that the Office Action's proposed modification of Feld in rejecting Claim 30 fails to establish a *prima facie* case of obviousness and is properly withdrawn.

Where a *prima facie* case of obviousness has not been established as demonstrated above, Applicant respectfully submits that Claim 30 is patentable over the art of record and that the rejection of Claim 30 is improper. Because Claim 30 is allowable, the remaining dependent claims are similarly allowable based on the allowability of Claim 30. Accordingly, it is respectfully submitted that all pending claims are now in condition for allowance, and early notification of same is respectfully requested.

The Commissioner is authorized to charge any deficiencies or fees in connection with this amendment to Deposit Account No. 06-2425.

Respectfully submitted,
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